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In The
Supreme Court of the United States
October Term, 1990

CHARLES W. BURSON,
ATTORNEY GENERAL AND REPORTER
FOR THE STATE OF TENNESSEE,

Petitioner,

v.

REBECCA FREEMAN,

Respondent.

Petition For Writ Of Certiorari
To The Tennessee Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does Tenn. Code Ann. § 2-7-111 (Supp. 1990), which prohibits the distribution of campaign literature, display of campaign materials, or solicitation of votes within 100 feet of the entrance to a polling place on election day in Tennessee, violate the Free Speech Clause of the First Amendment of the United States Constitution?

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PETITION FOR WRIT OF CERTIORARI

The petitioner urges that a writ of certiorari issue to review the judgment and opinion of the Tennessee Supreme Court entered in the above-entitled proceeding on October 1, 1990. That opinion is yet to be reported but is set forth at pages 7a through 20a of the Appendix to the petition for writ of certiorari.

STATEMENT OF THE CASE

This case concerns a facial challenge to the constitutionality of Tenn. Code Ann. § 2-7-111 (Supp. 1990) which prohibits the distribution of campaign literature, the display of campaign materials, or solicitation of votes within 100 feet of the entrance to a polling place on election day in Tennessee.¹ This statute was originally enacted as part of a major revision of Tennessee's Election Code in 1972. See 1972 Tenn. Pub. Acts Ch. 740, § 2-711. The legislative debates of this original enactment do not indicate any discussion of the language of Tenn. Code Ann. § 2-7-111 (Supp. 1990). Thus, any legislative intent with respect to Tenn. Code Ann. § 2-7-111 (Supp. 1990) will have to be ascertained from the four corners of the statute.

Since this case involves a facial challenge to the statute, the facts are sparse and undisputed. In the summer of 1987, the respondent, Rebecca Freeman, was the campaign treasurer for the election of Tom Watson to the City Council for Metropolitan Nashville-Davidson County, Tennessee. Ms. Freeman received information to indicate that as a result of the issuance of an opinion by the Tennessee Attorney General on April 2, 1987, campaign workers would not be allowed to go onto the property of polling places to distribute campaign materials even beyond the 100 foot boundary set forth by Tenn. Code Ann. § 2-7-111 (Supp. 1990).²

¹ Violation of this statutory provision is a misdemeanor while the 100 foot boundary signs are posted. Tenn. Code Ann. § 2-19-119 (Supp. 1990).

² The opinion of the Tennessee Attorney General of April 2, 1987 interpreted the phrase "on the grounds" in the
(Continued on following page)

As a result of her misperception as to the Tennessee Attorney General's interpretation of Tenn. Code Ann. § 2-7-111 (Supp. 1990), Ms. Freeman filed suit in Davidson County Chancery Court. The original focus of Ms. Freeman's challenge was two-fold: (1) the constitutionality of the prohibition of the display of campaign signs on polling place grounds, and (2) a challenge to the constitutionality of the 100 foot boundary.

Only two witnesses testified at the trial on October 24, 1988, namely: Ms. Freeman and Constance Ann Alexander, the Registrar-at-Large for Metropolitan Nashville-Davidson County. As Registrar-at-Large, Ms. Alexander was responsible for conducting all elections in Davidson County. Prior to her appointment as Registrar-at-Large, Ms. Alexander served as a Deputy Registrar-at-Large for approximately ten years. The testimony of both witnesses focused upon the operation of the 100 foot boundary rule

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following relevant part of Tenn. Code Ann. § 2-7-111(b) (Supp. 1990): "No campaign posters, signs or other campaign literature may be displayed on or in any building or on the grounds of any building in which a polling place is located." That phrase was interpreted by the Tennessee Attorney General to mean "that campaign posters, signs or other campaign literature may not be displayed either within the 100 foot boundary or, in the event the property line of the building where the polling place is located extends beyond the 100 foot boundary, within the property line." This opinion interpreted the statute to prohibit the placement of signs on the grounds of a polling place but did not state that individuals were prohibited from distributing campaign materials and soliciting votes outside the 100 foot boundary. Appendix at 3a-4a.

in the past and the possible effects of the elimination of 100 foot boundary rule for future elections.

In the past, Ms. Alexander witnessed as many as ten or more campaign workers at particular polling places distributing campaign materials outside the 100 foot boundary on election day. Furthermore, according to Ms. Alexander, individuals have been able to solicit votes and distribute campaign materials outside the 100 foot boundary even where the 100 foot boundary went beyond the grounds of the polling place. Likewise, Ms. Freeman admitted that she had in fact distributed materials and solicited votes beyond the 100 foot boundary at elections in Tennessee over the past seventeen years.

As for the distribution of materials unrelated to the election such as commercial, charitable or religious solicitations, Ms. Alexander was unaware of any incident where either a private company or a religious denomination distributed literature or material at a polling place on election day in Nashville. On the other hand, Ms. Freeman had a vague recollection of a single commercial solicitation occurring at a polling place in the past. But she could not recall any specifics with respect to that single incident and knew of no religious solicitations.

As for the effect of abolishing the 100 foot boundary rule, it was the opinion of Ms. Alexander as Registrar-at-Large that there would be confusion and congestion at the polling places. She indicated that at present, there are already a number of individuals located in a polling place including voters, election officials, voting machines technicians and poll watchers.³ If individuals are allowed to

³ According to Ms. Alexander, each candidate is entitled to have an individual at each polling place to watch the voting
(Continued on following page)

solicit votes in and around the polling place, it was the opinion of Ms. Alexander that there would be confusion and the possibility of errors made by election officials in the tabulation of votes. Likewise, Ms. Alexander was concerned with respect to potential congestion which would occur if campaign workers were allowed to solicit votes in and around the entrance to a polling place. Although Tennessee has other statutes which impose criminal sanctions for intimidation of voters, it was Ms. Alexander's opinion that such statutes would not alleviate the confusion, congestion and possible errors which would be created by the abolishment of the 100 foot boundary.

STATUTORY PROVISION INVOLVED

Tenn. Code Ann. § 2-7-111 (Supp. 1990): **Posting of sample ballots and instructions - Arrangement of polling place - Restrictions.** - (a) The officer of elections shall have the sample ballots, voting instructions, and other materials which are to be posted and placed in conspicuous positions inside the polling place for the use of voters. The officer shall measure off one hundred feet (100') from the entrances to the building in which the election is to be held and place boundary signs at the

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process to ensure its integrity; however, these individuals are not permitted to solicit votes.

distance. Provided, however, in any county having a population of:

<u>not less than</u>	<u>nor more than</u>
13,600	13,610
16,360	16,450
24,590	24,600
28,500	28,560
28,690	28,750
41,800	41,900
50,175	50,275
54,375	54,475
56,000	56,100
67,500	67,600
77,700	77,800
85,725	85,825

all according to the 1980 federal census or any subsequent federal census, the officer shall measure off three hundred feet (300') from the entrances to the building in which the election is to be held and place boundary signs at the distance.

(b) Within the appropriate boundary as established in subsection (a), and the building in which the polling place is located, the display of campaign posters, signs or other campaign materials, distribution of campaign materials, and solicitation of votes for or against any person or political party or position on a question are prohibited. No campaign posters, signs or other campaign literature may be displayed on or in any building or on the grounds of any building in which a polling place is located.

(c) The officer of elections shall have each official wear a badge with his name and official title.

(d) With the exception of counties having a metropolitan form of government, any county having a population over six hundred thousand (600,000) according to the 1970 federal census or any subsequent federal census, and counties having a population of between two hundred fifty thousand (250,000) and two hundred sixty thousand (260,000) by the 1970 census, any county may, by private act, extend the one hundred foot (100') boundary provided in this section. [Acts 1972, ch. 740, § 1; T.C.A., § 2-711; Acts 1980, ch. 543, §§ 1, 2, 1987, ch. 362, §§ 1, 2, 4.]

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

I.

THE DECISION OF THE TENNESSEE SUPREME COURT DECLARING TENN. CODE ANN. § 2-7-111 (SUPP. 1990) TO VIOLATE THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION IS INCONSISTENT WITH PRINCIPLES ENUNCIATED BY THIS COURT IN THE CITY OF RENTON, BOOS, WARD AND KOKINDA DECISIONS.

It is the position of the petitioner that Tenn. Code Ann. § 2-7-111 (Supp. 1990) is a reasonable time, place and manner regulation of free speech. This court has established standards by which to assess whether a time, place and manner regulation of free speech meets constitutional muster. In the decision of *Buckley v. Valeo*, 424 U.S. 1 (1976), this Court stated that a government "may adopt reasonable time, place and manner regulations, which do not discriminate among speakers or ideas, in

order to further an important governmental interest unrelated to the restriction of communication." *Id.* at 18.

Subsequent to the *Buckley* decision, this Court has developed a three step test with respect to determining the validity of time, place and manner restrictions. First, the restriction "may not be based upon either the content or subject matter of speech." *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530, 537 (1980). Second, a valid time, place and manner regulation must also "serve a significant governmental interest." *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771 (1976). Third, if the place and manner restriction is limiting what is otherwise a public forum, it must also be sufficiently clear that alternative forums are available. *Heffron v. The International Society for Krishna Consciousness*, 452 U.S. 640, 655 (1978).

The Tennessee Supreme Court concluded that Tenn. Code Ann. § 2-7-111 (Supp. 1990) "is content-based because it regulates a specific subject matter, the solicitation of votes and the display or distribution of campaign materials, and a certain category of speakers, campaign workers." *Freeman v. Burson*, slip op., appendix 14a (October 1, 1990). This conclusion conflicts with the principles enunciated by this court in four decisions: *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Boos v. Barry*, 108 S.Ct. 1157 (1988); *Ward v. Rock Against Racism*, 109 S.Ct. 2746 (1989); and *United States v. Kokinda*, 110 S.Ct. 3115 (1990).

In the *City of Renton* case, this Court was confronted with an ordinance which prohibited any "adult motion picture theatre" from locating within 1000 feet of any residential zone, single or multi-family dwelling, church

or park and within one mile of any school. In writing the opinion for the majority, then Justice Rehnquist upheld the ordinance as being content-neutral for the following reason:

The *Renton* ordinance is aimed not at the content of the film shown at "adult motion picture theatres", but rather at the secondary effects of such theatres on the surrounding community. The district court found that the city council's "predominant concerns" were with the secondary effects of adult theatres, and not with the content of adult films themselves.

City of Renton, 475 U.S. at 47.

The fact that "adult movie theatres" as opposed to all other types of movie theatres were affected by this restriction did not render the ordinance content-based since the predominant intent of the City Council in enacting the regulation was related to "the City's pursuit of its zoning interests . . . unrelated to the suppression of free expression." *Id.* See also, *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U.S. 748 at 771 (1976); *Clark v. Community of Creative Non-Violence*, 468 U.S. 288 at 293 (1984); *Heffron v. International Society of Krishna Consciousness*, 452 U.S. 648 at 655 (1978).

The Tennessee Supreme Court rejected the application of the "secondary effect" analysis in the *City of Renton* case on the grounds that the opinion was limited to "businesses that purvey sexually explicit materials" and did not apply to statutes limiting political expression. *Freeman v. Burson*, slip op., appendix at 13a (October 1, 1990). In particular, the Tennessee Supreme Court noted that this Court "avoided the *City of Renton* formula when it next considered a political speech case, namely the *Boos*

decision." *Id.* However, the *Boos* decision in fact provides the strongest support for the petitioner's contention that the secondary effect analysis of the *City of Renton* decision is applicable to Tenn. Code Ann. § 2-7-111 (Supp. 1990).

In the *Boos* case, this Court was confronted with a restriction on picketing in front of foreign embassies in Washington, D.C. In particular, the ordinance prohibited the "display of any flag, banner, plaque, or device designed or adapted to intimidate, coerce, or bring into odium any foreign government within 500 feet of any building or premises within the District of Columbia used or occupied by any foreign government or its representatives." *Boos*, 108 S.Ct. at 1160. In writing the opinion for the Court, Justice O'Connor held that the ordinance was content-based because "the government has determined that an entire category of speech - signs or displays critical of foreign governments - is not to be permitted." *Id.*⁴

In concluding that the regulation was content-based, Justice O'Connor did not reject the applicability of the secondary effect analysis of the *City of Renton* case. Rather, the secondary effect justification asserted by the government was found to be content-based. In particular, Justice O'Connor stated the following:

⁴ The government had contended that the statute was not content-based because the government "is not itself selecting between view points; the permissible message on a picket sign is determined solely by the policy of a foreign government." *Boos*, 108 S.Ct. at 1163. However, this argument was rejected by the Court. *Id.*

Applying these principles to the case at hand leads readily to the conclusion that the display clause is content-based. The clause is justified *only* by reference to the content of speech. Respondents and the United States do not point to the "secondary effects" of picket signs in front of embassies. They do not point to congestion, to interference with ingress or egress, to visual clutter, or to the need to protect the security of embassies. Rather, they rely on the need to protect the dignity of foreign diplomatic personnel by shielding them from speech that is critical of their governments. This justification focuses only on the content of the speech and the direct impact that speech has on its listeners. The emotive impact of speech on its audience is not a "secondary effect". Because the display clause regulates speech due to its potential primary impact, we conclude it must be content-based.

Id. at 1164. Thus, the government lost the *Boos* case not because of a refusal by this Court to apply the secondary effect analysis of the *City of Renton* case to political expression, but rather because the government had failed to provide a content-neutral secondary effect justification for the ordinance.

In the *Ward* case, this Court was confronted with a municipal noise regulation designed to ensure that music performances in a band shell owned by the City of New York did not disturb surrounding residents. In writing the opinion for the Court, Justice Kennedy cited the *City of Renton* case for the proposition that "a regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." *Ward*, 109 S.Ct. at 2754. Furthermore, the *Boos* decision was cited by

Justice Kennedy for the proposition that "government regulation of expressive activity is content neutral so long as it is 'justified without reference to the content of the regulated speech.' " *Id.* Based upon these principles, Justice Kennedy concluded that on the record in this case, "the City's concern with sound quality extends only to clearly content-neutral goals of ensuring adequate sound amplification and avoiding the problems associated with inadequate sound mix." *Id.*

In the *Kokinda* case, this Court was confronted with a challenge to the constitutionality of a postal regulation which prohibited solicitation on postal premises. 39 CFR § 232.2(h)(1). Justice O'Connor, in writing the plurality opinion for the Court, held that a sidewalk leading to a post office was not a public forum meaning that the "government's decision to restrict access to a nonpublic forum need only be *reasonable* . . . " *Kokinda*, 110 S.Ct. at 3122 (O'Connor, J., plurality). Furthermore, Justice O'Connor noted that the Postal Service had "not expressly dedicated its sidewalks to any expressive activity." *Id.* at 3121. In his concurring opinion, Justice Kennedy concluded that it was unnecessary to determine the public versus nonpublic forum issue because "the postal regulation at issue meets the traditional standards we have applied to time, place and manner restrictions of protected activity." *Kokinda*, 110 S.Ct. at 3125-26 (Kennedy, J., concurring).

The decision of the Tennessee Supreme Court in this case conflicts with the principles enunciated in *City of Renton*, *Boos*, *Ward* and *Kokinda*. The justification for the 100 foot boundary in the present is not the content of Ms.

Freeman's speech, i.e. political versus religious or commercial. Rather, the justification relates to secondary effects created in the absence of the regulation such as congestion, interference with ingress and egress to the polling place and overall confusion in the voting process. The fact that political speech, as opposed to commercial speech or religious speech is being restricted in this instance does not render the regulation content-based.

Tenn. Code Ann. § 2-7-111 (Supp. 1990) is intended to deal with congestion and confusion caused by campaign workers at polling places on election day soliciting votes and distributing campaign literature. The undisputed evidence at trial indicated that such campaign workers are at polling places in numbers as many as ten on election day; whereas, commercial, charitable and religious solicitors are virtually non-existent. By restricting election related activities at a polling place on election day, Tennessee has addressed existing and not hypothetical problems. Accordingly, it is the position of the petitioner that the decision of the Tennessee Supreme Court holding Tenn. Code Ann. § 2-7-111 (Supp. 1990) to be content-based is inconsistent with the principles enunciated in the decision by this Court in the *City of Renton*, *Boos* and *Ward* cases.

Furthermore, it is the position of the petitioner that sidewalks within 100 feet of the entrance to a polling place are not public fora within the meaning of *Kokinda*. It is undisputed that Tenn. Code Ann. § 2-7-111 is a "reasonable" regulation. *Freeman v. Burson*, slip op., appendix at 15a-16a (state failed least restrictive means test as to Tenn. Code Ann. § 2-7-111, but met the compelling state interest test). Therefore, the decision of the Tennessee

Supreme Court also conflicts with the principles in *Kokinda*.⁵

As for decisions by other state supreme courts or federal courts of appeals, there are two decisions with respect to polling place regulations both of which are distinguishable from the present case. See *Daily Herald Co. v. Munro*, 838 F.2d 380, 386 (9th Cir. 1988) (Ninth Circuit in concluding that the prohibition against exit polling was not content-neutral indicated the "State's true motive [for the prohibition] was to prevent the media from broadcasting election results before the polls closed."); *Clean Up '84 v. Heinrich*, 759 F.2d 1511, 1514 (11th Cir. 1985) (Statute which prohibited solicitation of signatures on a petition unrelated to matters on the ballot was held to be unconstitutionally overbroad in that the statute prohibited activity which did not cause voter disruption or confusion).⁶

⁵ It should be noted that the *Kokinda* decision was rendered after the oral arguments in this case. Thus, neither party presented any arguments concerning the *Kokinda* reasoning to the Tennessee high court.

⁶ Since the Tennessee Supreme Court found that Tenn. Code Ann. § 2-7-111 was content-based, then it did not address the question of whether the statute furthered significant state interests and provided alternate channels of communication which are the second and third prongs for testing whether a regulation of speech does so in reasonable time, place and manner. However, the petitioner also contends that: (1) Tenn. Code Ann. § 2-7-111 does further a significant state interest in

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II.

THE DECISION OF THE TENNESSEE SUPREME COURT HOLDING TENN. CODE ANN. § 2-7-111 (SUPP. 1990) IN VIOLATION OF THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION RAISES A SERIOUS QUESTION OF NATIONAL IMPORTANCE REGARDING THE AUTHORITY OF STATES TO MAINTAIN ORDER IN REGULATING THE CONDUCT OF ELECTIONS.

Tenn. Code Ann. § 2-7-111 (Supp. 1990) is not a unique statute among the states. In fact, every single state in this country has some type of regulation regarding activities in and outside of polling places on election day. Attached to this petition is a chart of the polling place statutes in all fifty states along with each of the relevant statutes. See Appendix 21a-50a.

A review of these polling place statutes reveals two interesting points with respect to Tenn. Code Ann. § 2-7-111 (Supp. 1990). First, the 100 foot boundary is well within the average among all of the states. There are thirty-six (36) other states which provide for a

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ensuring that the election process at the polling place is conducted in an orderly manner with as little confusion as possible so as to preserve the integrity of the election process with as few mistakes as possible by election officials; and (2) Tenn. Code Ann. § 2-7-111 allows for alternate channels of communication by permitting Ms. Freeman and other campaign workers to solicit votes and distribute campaign materials outside the 100 foot boundary. Accordingly, Tenn. Code Ann. § 2-7-111, contrary to the pronouncement by the Tennessee Supreme Court, is a reasonable time, place and manner regulation.

boundary of 100 feet or more. Second, and more importantly, forty (40) states, like Tennessee, have some form of election related restriction inside the designated boundary. These restrictions vary from prohibiting "electioneering" to a ban on the distribution of campaign literature.

In addition to the national significance of the polling place regulations vis-a-vis the fact that every state has some form of polling place regulation, this Court has indicated that "preserving the integrity of the electoral process, preventing corruption and sustaining the act of alert responsibility of the individual citizen in a democracy for the wise conduct of government are all interest of the highest importance." *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 788 (1978)

The ability of states to regulate speech activities around the polling place on election day is a serious question of national importance. It is not an academic question concerning the ability of a state to exercise authority in an area of only minor significance. Rather, the issue in this case concerns the ability of every state in this country to continue to regulate election day speech activities at the polling place in order to ensure orderly, fair and honest elections.

CONCLUSION

Based upon the decisions of this Court in the *City of Renton*, *Boos*, *Ward* and *Kokinda* cases along with the fact that every state in this country has some form of regulation concerning speech activities around polling places on election day, the petitioner urges this Court to grant the petition for writ of certiorari.

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MARY REBECCA FREEMAN) IN THE CHANCERY
 VS. No. 87-1763-I) COURT FOR THE
) STATE OF TENNESSEE
 CHARLES W. BURSON, IN) 20TH JUDICIAL
 HIS CAPACITY AS) DISTRICT
 ATTORNEY GENERAL AND) DAVIDSON COUNTY
 REPORTER FOR THE STATE) PART ONE
 OF TENNESSEE, ET AL.)

MEMORANDUM

(Filed 1989 Apr 26)

This action came on for trial on the complaint of the plaintiff Mary Rebecca Freeman seeking a Declaratory Judgment that T.C.A. § 2-7-111 violates the First and Fourteenth Amendments to the United States Constitution, Art. 1, § 8, 19 and Art. 11, § 8 of the Tennessee Constitution. Further, plaintiff seeks a permanent injunction against the enforcement of T.C.A. §§ 2-7-111 and 2-19-119 which provides criminal penalties for violation of T.C.A. § 2-7-111. The defendant Charles W. Burson, the Attorney General and Reporter for the State of Tennessee contends that T.C.A. § 2-7-111 does not violate the Constitutions of the State of Tennessee or the United States.

Pursuant to Rule 41.01 of the Tennessee Rules of Civil Procedure, the plaintiff has nonsuited her complaint as to defendant Metropolitan Government of Nashville, Davidson County, Tennessee.

Findings of Fact

For evidentiary purposes of the trial, the parties have stipulated to the following facts which the Court adopts:

1. Mary Rebecca Freeman is a resident and citizen of Nashville, Davidson County, Tennessee. She is an attorney licensed to practice law by the State of Tennessee. She is a member of the Davidson County Democratic Executive Committee, having been chose [sic] for such office by popular election in democratic primary elections in 1976, 1978, 1980, 1982, 1984 and 1986.

2. The defendant, Charles W. Burson, is a resident and citizen of Nashville, Davidson County, Tennessee. He is employed as Attorney General and Reporter for the State of Tennessee and is sued in his official capacity only. He succeeded the former defendant, W. J. Michael Cody as Attorney General and Reporter on October 1, 1988. Pursuant to Rule 25.04, Charles W. Burson was automatically substituted as party defendant in this case.

3. The relevant portion of T.C.A. § 2-7-111, which the plaintiff challenges is as follows:

(a) The officer of elections shall have the sample ballots, voting instructions, and other materials which are to be posted placed [sic] [in conspicuous positions inside the polling place] for the use of voters. The officer shall measure off one hundred feet (100') from the entrances to the building in which the election is to be held and place boundary signs at that distance. Provided, however, in any county having a population of:

<u>Not less than</u>	<u>Nor more than</u>
13,600	13,610
16,350	16,450
24,590	24,600
28,500	28,560

41,800	41,900
50,175	50,275
54,375	54,475
56,000	56,100
67,500	67,600
77,700	77,800
85,725	77,825

all according to the 1980 federal census or any subsequent federal census, the officer shall measure off three hundred feet (300') from the entrances to the building in which the election is to be held and place boundary signs at that distance.

(b) Within the appropriate boundary as established in subsection (a), and the building in which the polling place is located, the display of campaign posters, signs or other campaign materials, distribution of campaign materials, and solicitation of votes for or against any person or political party or position on any question are prohibited. No campaign posters, signs or other campaign literature may be displayed on or in any building or on the grounds of any building in which a polling place is located.

4. On April 2, 1987, W. J. Michael Cody, as Attorney General and Reporter of the State of Tennessee, issued an Opinion with respect to the display of campaign posters, signs and other campaign literature beyond the 100-foot boundary, but still on the polling place grounds. In that Opinion, the Attorney General stated the following:

It is the opinion of this office that the phrase 'on the grounds', in the context of T.C.A. § 2-7-111(b) means that campaign posters, signs or other campaign literature may not be displayed either within the 100-foot

boundary or, in the event the property line of the building where the polling place is located extends beyond the 100-foot boundary, within the property line.

That Opinion is attached to these Stipulations and marked as Exhibit No. 1.

5. The plaintiff contends that T.C.A. § 2-7-111 and § 2-19-119 on their face violate the following constitutional provisions: (1) First Amendment to the United States Constitution, (2) Fourteenth Amendment to the United States Constitution, (3) Article 1, § 19 of the Tennessee Constitution, (4) Article 1, § 8 of the Tennessee Constitution, and (5) Article XI, § 8 of the Tennessee Constitution.

6. The defendant contends that T.C.A. § 2-7-111 does not violate any provision of either the Tennessee or United States Constitutions.

7. The plaintiff has a present intention to continue to solicit votes and disseminate campaign literature at polling places in future elections.

Plaintiff, who is a registered voter in Davidson County, Tennessee, testified concerning her political activities as an officeholder and as a worker or participant in various state and federal political campaigns. She contends that because of the 100 foot boundary restriction at the polling places, she is unable to reach voters in some precincts. However, she has solicited votes beyond the 100 foot boundary restriction.

Ann Alexander, Registrar-at-Large for Davidson County, testified on behalf of the defendant. She stated to the effect that but for the 100 foot restriction, there would be interference with voting, confusion and overcrowding

at the polling places and mistakes made by election officials.

Conclusions of Law

The issue presented for determination is whether T.C.A. § 2-7-111 violates the provisions of the Constitutions of Tennessee and the United States.

Based upon the findings of fact and the presumption that T.C.A. § 2-7-111 is constitutional, the Court makes the following declarations with respect to the rights of the parties:

1. The Court has jurisdiction of this declaratory judgment action pursuant to T.C.A. § 29-14-101, *et seq.*

2. T.C.A. § 2-7-111 is reasonable as to time, place and manner of the speech in question. *See Buckley v. Valeo*, 424 U.S. 1 (1976); *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530, 537 (1980); *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771 (1976).

3. The speech restricted in T.C.A. § 2-7-111 is content neutral; that is, there is no reference to the content of the campaign materials to be displayed or distributed. *See Boos v. Barry*, 485 U.S. ___, 99 L. Ed. 2d 333, 108 S. Ct. 1157 (1988).

4. The 100 foot boundary rule of the defendant government serves a compelling state interest with respect to the protection of voters and election officials from interference, harassment or intimidation during the voting process. *See T.C.A. § 2-1-102 and Emery v. Robertson*

County Election Commission, 586 S.W.2d 103, 109 (Tenn. 1979).

5. The plaintiff has alternate channels to exercise her speech; that is, she is free to distribute campaign materials and solicit votes 100 feet from the polling place. See *Heffron v. International Society for Krishna Consciousness, Inc., et al.*, 452 U.S. 640, 655, 101 S. Ct. 2559 (1981).

5. T.C.A. § 2-7-111 is not unconstitutional for vagueness because a person of ordinary intelligence can understand its meaning. See *State v. Lindsay*, 637 S.W.2d 886, 889 (Tenn. 1982).

6. Plaintiff does not have standing to challenge the constitutionality of the 300 foot boundary in twelve (12) counties described in T.C.A. § 2-7-111(a), because she is not a resident of those counties. She is a resident of Davidson County where the 100 foot boundary is applicable. See T.C.A. § 2-1-102(2).

Accordingly, the Court finds that T.C.A. § 2-7-111 does not violate the First and Fourteenth Amendments to the United States Constitution, nor Art. 1, § 8 and 19 or Art. 11, § 8 of the Tennessee Constitution.

General Catalano shall prepare an appropriate order. The costs are taxed to the plaintiff.

/s/ Irvin H. Kilcrease Jr
IRVIN H. KILCREASE, JR.
CHANCELLOR

April 26, 1989

cc: John E. Herbison
Michael W. Catalano

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

	)	FOR PUBLICATION
)	
MARY REBECCA FREEMAN,	)	Filed
Plaintiff-Appellant,	)	October 1, 1990
V.	)	DAVIDSON
	)	CHANCERY
CHARLES W. BURSON,	)	Hon. Irvin H.
Defendant-Appellee.	)	Kilcrease, Jr.
	)	Chancellor
	)	No. 89-46-I
	)	(Filed Oct 01 1990)

For Plaintiff-Appellant:

John E. Herbison
Nashville, Tennessee

For Defendant-Appellee:

Charles W. Burson
Attorney General and
Reporter

Michael W. Catalano
Deputy Attorney General
Nashville, Tennessee

OPINION

REVERSED.

DROWOTA, C.J.

Tenn. Code Ann. §2-7-111 prohibits the solicitation of votes and the display of campaign materials within a 100-foot radius of polling places on election day. Tenn. Code Ann. §2-19-119 fixes criminal penalties for violations of Section 2-7-111. Plaintiff brought suit in Davidson County Chancery Court, seeking a permanent injunction against enforcement of these statutes and a declaratory judgment that the statutes are unconstitutional under both the

United States and Tennessee Constitutions. The Chancellor held the statutes constitutional and dismissed Plaintiff's suit. For the following reasons, we now reverse the Chancellor's judgment.

Plaintiff, Mary Rebecca Freeman, is a resident of Davidson County who has served on a local party executive committee many times. She testified that she has been a candidate for office, has managed local campaigns, and has worked actively in state-wide elections.

Plaintiff testified that personal solicitation and other election place campaigning methods are especially important in district-specific races because mass media is prohibitively expensive and is ineffective to target small locales and minor issues. Plaintiff stated that the 100-foot ban on personal solicitation and display or distribution of campaign materials has limited her ability to communicate with voters. Her proof showed that in some instances the 100-foot boundary extends onto the sidewalks and streets adjacent to the polling places. In other instances it permits some campaign activity on the grounds of the polling place if the grounds are sufficiently large. Plaintiff also testified that she had seen some commercial solicitation occur at polling places.

On behalf of the State, Constance Ann Alexander, the Davidson County Registrar and former executive secretary for the election commission, testified about the conduct of elections. She stated that she had personally observed campaign workers thrusting handbills into the windows of voters' cars on the polling premises. She had never observed commercial or religious solicitation within the 100-foot boundary. She testified additionally

that she was aware the 100-foot boundary sometimes extended into the street.

In Ms. Alexander's view, elimination of the boundary would result in disruption and confusion, especially in larger and more heated elections. She testified that without the 100-foot boundary there would be a greater possibility for error in tabulating votes and in keeping track of the voters. Additionally, voting locations would be overcrowded, and people would campaign inside polling places. Ms. Alexander's specific testimony about confusion, error, and disruption, however, related to the numbers of persons present in the polling place itself.

In a memorandum opinion filed April 26, 1989, the Chancellor upheld the challenged statutes, finding that Section 2-7-111 was a content-neutral, reasonable time, place, and manner restriction; that the 100-foot boundary served a compelling state interest in protecting voters from interference, harassment, and intimidation during the voting process; and that there was an alternative channel for Plaintiff to exercise her free speech rights outside the 100-foot boundary. Because the constitutionality of statutes are the sole determinative issues, Plaintiff's appeal from the Chancellor's judgment is directly to this Court pursuant to Tenn. Code Ann. §16-4-108.

Plaintiff argues that the statutes at issue facially violate the First and Fourteenth Amendments to the United States Constitution and Article I, §19, Article I, §8, and Article XI, §8 of the Tennessee Constitution. The principal statute challenged in this instance, Tenn. Code Ann. §2-7-111, states in relevant part:

(a) The officer of elections shall have the sample ballots, voting instructions, and other materials which are to be posted placed in conspicuous positions inside the polling place for the use of voters. The officer shall measure off one hundred feet (100') from the entrances to the building in which the election is to be held and place boundary signs at that distance. Provided, however, in any county having a population of:

<u>not less than</u>	<u>nor more than</u>
13,600	13,610
16,350	16,450
24,590	24,600
28,500	28,560
41,800	41,900
50,175	50,275
54,375	54,475
56,000	56,100
67,500	67,600
77,700	77,800
85,725	85,825

all according to the 1980 federal census or any subsequent federal census, the officer shall measure off three hundred feet (300') from the entrances to the building in which the election is to be held and place boundary signs at that distance.

(b) Within the appropriate boundary as established in subsection (a), and the building in which the polling place is located, the display of campaign posters, signs or other campaign materials, and solicitation of votes for or against any person or political party or position on a question are prohibited. No campaign posters, signs or other campaign literature may be displayed on or in any building or on the grounds

of any building in which a polling place is located.¹

The above statute regulates political speech, which is the most highly protected form of speech. "Indeed, the First Amendment 'has its fullest and most urgent application' to speech uttered during a campaign for political office." *EU v. San Francisco City Democratic Central Committee*, 1189 U.S. ___, 109 S.Ct. 1013, 1020, 103 L.Ed.2d 271 (1989). See also *Bemis Pentecostal Church v. State*, 731 S.W.2d 897, 903 (1987). The State argues, though, that Section 2-7-111 is a constitutionally valid time, place, and manner restriction of political speech.

The State may enforce reasonable time, place, and manner regulations of expressive conduct as long as the restrictions "are content neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *United*

¹ The remaining text of the statute is as follows:

2-7-111. Posting of sample ballots and instructions - Arrangement of polling place - Restrictions. . . .

(c) The officer of elections shall have each official wear a badge with his name and official title.

(d) With the exception of counties having a metropolitan form of government, any county having a population over six hundred thousand (600,000) according to the 1970 federal census or any subsequent federal census, and counties having a population of between two hundred fifty thousand (250,000) and two hundred sixty thousand (260,000) by the 1970 census, any county may, by private act, extend the one hundred foot (100') boundary provided in this section. [Acts 1972, ch. 740, §1; T.C.A., §2-711; Acts 1980, ch. 543, §§1, 2; 1987, ch. 362, §§1, 2, 4.]

States v. Grace, 461 U.S. 171, 177, 103 S.Ct. 1702, 1707, 75 L.Ed.2d 736 (1983) (quoting *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45, 103 S.Ct. 948, 955, 74 L.Ed.2d 794 (1983)). In order for Section 2-7-111 to qualify as a reasonable time, place, and manner restriction, the State must first show that the statute is content-neutral. The state insists that the statute is content-neutral because it does not discriminate against speakers or ideas and furthers an important governmental interest – the integrity and orderliness of the voting process – unrelated to the restriction of communication. See *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). While the State admits that the statute on its face criminalizes only political speech and political activity, the State points out that the statute does not discriminate on the basis of political viewpoints. The State contends that the rationale of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 is controlling.

City of Renton dealt with an ordinance which prohibited any “adult motion picture theatre” from locating within 1,000 feet of any residential zone, single or multiple-family dwelling, church, park, or school. The U.S. Supreme Court upheld the ordinance as content-neutral because “[t]he ordinance is aimed not at the *content* of the films shown at ‘adult motion picture theatres,’ but rather at the *secondary effects* of such theatres on the surrounding community.” *Id.* at 47, 106 S.Ct. at 929. The State insists that the statute in question is likewise aimed at the “secondary effects” of political activity at the polling places – crowds, confusion, intimidation of voters, etc. – rather than at the speech itself.

We reject the State’s argument. The Court in *City of Renton* limited its opinion to businesses that purvey sexually explicit materials and distinguished that type of expression as one for which society’s interest is of a different and lesser magnitude than society’s interest in protecting the kind of political expression at issue in the instant case. See *City of Renton*, 475 U.S. at 49, n. 2, 106 S.Ct. at 929, n. 2. In contrast to the restrictive zoning of pornography outlets, the statutes challenged in this case limit political expression, which “is at the core of our electoral process and of the First Amendment freedoms[.]” *Williams v. Rhodes*, 393 U.S. 23, 32, 89 S.Ct. 5, 11, 21 L.Ed.2d 24 (1968), “an area in which the importance of First Amendment protection is ‘at its zenith.’” *Meyer v. Grant*, 486 U.S. 414, ___, 108 S.Ct. 1886, 1894, 100 L.Ed.2d 425 (1988). We note that the Supreme Court avoided the *Renton* formula when it next considered a political speech case. See *Boos v. Barry*, 485 U.S. 312, 108 S.Ct. 1157, 99 L.Ed.2d 333 (1988). We note also that at least two courts have refused to apply *Renton* in cases involving political activity near polling places. See *Finzer v. Barry*, 798 F.2d 1450, 1469, n. 15 (D.C. Cir. 1986), *cert. granted sub nom. Boos v. Barry*, 479 U.S. 1083, 107 S.Ct. 1282, 94 L.Ed.2d 141 (1987); *Florida Committee For Liability Reform v. McMillan*, 682 F.Supp. 1536 (M.D. Fla. 1988).

Even if the *Renton* analysis can be applied to political expression, it is not available to defend the statutes in question in this case. The lower level of scrutiny applied to content-neutral regulation is available only if the asserted governmental interest is unrelated to the suppression of speech. *United States v. O’Brien*, 391 U.S. 367, 377, 88 S.Ct. 1673, 1679, 20 L.Ed.2d 672 (1968). However,

the State put on no proof that the display or distribution of campaign materials or the solicitation of votes near polling places has a different effect from that of the communication of other messages at polling places. In fact, the State's witness, Ms. Alexander, admitted on cross-examination that if there were persons soliciting for charitable organizations inside the 100-foot boundary that would pose the same kind of problems as persons soliciting votes inside that boundary. We, therefore, find that Section 2-7-111 is content-based because it regulates a specific subject matter, the solicitation of votes and the display or distribution of campaign materials, and a certain category of speakers, campaign workers.

Regulations which restrain speech on the basis of its content presumptively violate the First Amendment. *National Broadcasting Co., Inc. v. Cleland*, 697 F.Supp. 1204, 1211 (N.D. Ga. 1988); *City of Renton*, 475 U.S. at 46-47, 106 S.Ct. at 728-29. Such a regulation may be upheld only if the State can prove that "the burden placed on free speech rights is justified by a compelling state interest. The least intrusive means must be utilized by the State to achieve its goals and the means chosen must bear a substantial relation to the interest being served by the statute in question." *Bemis*, 731 S.W.2d at 903.

The State's rationale for the 100-foot "buffer zone" around polling places is the prevention of interference with voting, confusion, mistakes, and overcrowding at polling places. States certainly have an interest in maintaining peace, order and decorum at the polls and "preserving the integrity of their electoral processes." *Brown v. Hartlage*, 456 U.S. 45, 52, 102 S.Ct. 1523, 1528, 71 L.Ed.2d 732 (1982); *Mills v. Alabama*, 384 U.S. 214, 218, 86

S.Ct. 1434, 1436, 16 L.Ed.2d 484 (1966). The State unquestionably has shown a compelling interest in banning solicitation of voters or distribution of campaign materials *within the polling place itself*.

Tenn. Code Ann. §2-7-111, however, is not narrowly tailored to advance the State's interest. The statute at issue prohibits all campaign activity from an arc of 100 feet from *every* entrance to the polling places. In many instances this arc extends onto public streets and sidewalks. The State has not shown a compelling interest in the 100-foot radius. The specific testimony of the State's witness about confusion, error, overcrowding, etc. concerned the numbers of persons present in the polling place itself, not the numbers of persons outside the polls.

Several other courts have dealt with similar attempts to insulate the environs of the polling place from political speech. With one exception these regulations have been held to violate the First Amendment, either because they were overbroad in reaching onto private property or because they insufficiently advanced the asserted governmental interest. *See Daily Herald Co. v. Munro*, 838 F.2d 380 (9th Cir. 1988) (ban on exit polling within 300 feet of polling place); *Committee for Sandy Springs, Georgia, Inc. v. Cleland*, 708 F.Supp. 1289 (N.D. Ga. 1988) (ban on soliciting signatures for petition within 250 feet of polling place); *Florida Committee for Liability Reform v. McMillian*, 682 F.Supp. 1536 (M.D. Fla. 1988) (ban on solicitation for any purpose within 150 feet of polling place); *CBS Inc. v. Smith*, 681 F.Supp. 794 (S.D. Fla. 1988) (ban on exit polling within 150 feet); *NBC v. Cleland*, 697 F.Supp. 1204 (N.D. Ga. 1988) (250 foot boundary for solicitation, distribution

of campaign literature, and exit polling); *National Broadcasting Co., Inc. v. Colburg*, 699 F.Supp. 241 (D. Mont. 1988); *Firestone v. News Press Publishing Co., Inc.*, 538 So.2d 457 (Fla. 1989) (exclusion of non-voters from area within 50 feet of polling room).

In *Florida Committee for Liability Reform v. McMillan*, 682 F.Supp. 1536 (M.D. Fla. 1988), the district court granted a preliminary injunction against enforcement of a statute prohibiting solicitation within 150 feet of polling places, holding that the statute was overbroad with respect to subject matter and geographic application. *Id.* Addressing the stated government interest of preventing voter harassment, the Court concluded:

... if the quality of this interest is merely the offense suffered by a voter who approaches the polls only to be approached by a petitioner, this brief exposure to grassroots democratic process, however unpalatable to some individuals, cannot justify a restriction on speech when the offensive activity can be avoided readily by communicating a declination of interest to the petitioner.

Id. at 1542.

Likewise, if the State's interest in preventing voter interference in the case at bar consists only of shielding voters from annoying campaign workers armed with cheap ball point pens and fingernail files embossed with a candidate's name, this interest cannot justify an infringement upon free speech rights. Furthermore, Tenn.

Code Ann. §§2-19-101² and 2-19-115³ adequately prohibit voter interference and intimidation.

Moreover, the statute is not the least restrictive means to serve the State's interests. A boundary which precludes solicitation near the entrances and exits of the polling place, thereby protecting the voting lines from

² 2-19-101. Interfering with nominating meeting or election. – A person commits a misdemeanor if he:

(1) Breaks up or attempts to break up any legally authorized political party nominating meeting or any election by force or violence;

(2) Assaults or attempts to assault the persons conducting the meeting or the election officials;

(3) Destroys or carries away or attempts to destroy or carry away a ballot box or voting machine; or

(4) Uses force or violence in any other way to prevent the fair and lawful conduct of the nominating meeting or election. [Acts 1972, ch. 740, §1; T.C.A., §2-1901.]

³ 2-19-115. Violence and intimidation to prevent voting. – It is a misdemeanor for any person directly or indirectly, by himself or through any other person:

(1) By force or threats to prevent or endeavor to prevent any elector from voting at any primary or final election;

(2) to make use of any violence, force or restraint, or to inflict or threaten the infliction of any injury, damage, harm or loss; or

(3) In any manner to practice intimidation upon or against any person in order to induce or compel him to vote or refrain from voting, to vote or refrain from voting for any particular person or measure, or on account of such person having voted or refrained from voting in any such election. [Acts 1972, ch. 740, §1; T.C.A., § 2-1915.]

congestion or undue disruption, but which permits solicitation in other yet somewhat less proximate places, might perhaps pass constitutional muster. We note that one court has held that a 25-foot boundary is valid to prevent congestion and disruption at the entrances to the polling place. See *NBC v. Cleland*, 697 F.Supp. 1204 (N.D. Ga. 1988).

However, such a limited statute, carefully drafted to protect the rights of the speakers while furthering the State's compelling interests, is not before this Court today. Accordingly, we reverse the judgment of the Chancellor and hold that Tenn. Code Ann. §§2-7-111 and 2-19-119 are constitutionally invalid. The costs of appeal are taxed to the Appellee.

/s/ Frank F. Drowota, III
FRANK F. DROWOTA, III
JUSTICE

Concur:

Cooper, O'Brien and Daughtry, JJ.

Fones, J., dissenting. See separate opinion.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

	)	FOR PUBLICATION
)	
MARY REBECCA FREEMAN,	)	DAVIDSON
Plaintiff-Appellant,	)	COUNTY
V.	)	Hon. Irvin H.
	)	Kilcrease, Jr.
CHARLES W. BURSON,	)	Chancellor
Defendant-Appellee.	)	No. 89-46-I
	)	FILED
	)	OCT 01 1990

DISSENT

I respectfully dissent. The majority says that the state unquestionably has a compelling interest in preserving the integrity of the electoral process that would support banning solicitation of votes and distribution of campaign materials within the polling place itself. They seem to say that a ban of 25 feet from the entrance would probably pass constitutional muster. However, a 100 foot ban places an unpalatable, unjustified, unconstitutional restriction on free speech, according to the majority.

When a constitutional attack is made upon a legislative act, the Court is required to indulge every presumption in favor of its validity and resolve any doubt in favor of, rather than against, the constitutionality of the act. *Dorrier v. Dark*, 537 S.W.2d 888 (Tenn. 1976); *Memphis Publishing Co. v. City of Memphis*, 513 S.W.2d 511 (Tenn. 1974) and *Black v. Wilson*, 182 Tenn. 623, 188 S.W.2d 609 (1945). The majority has totally ignored this presumption

I would indulge the presumption of validity this legislative act is entitled to receive in this Court and uphold the constitutionality of the 100 foot ban.

/s/ Wm. H. D. Fones
Wm. H. D. Fones, Justice

STATE	CHART OF POLLING PLACE STATUTES				
	DISTANCE ¹	CRIME ²	ELECTION RELATED ³	TOTAL BAN ⁴	OTHER ⁵
Alabama	30			X	
Alaska	200	X	X		
Arizona	150	X	X		
Arkansas	100	X	X		X
California	100	X	X		
Colorado	100	X	X		
Connecticut	75	X	X		X
Delaware	50	X	X		
Florida ⁶	300	X	X		
Georgia	50		X		
Hawaii	1000	X	X		
Idaho	100	X	X		X
Illinois	100	X	X		
Indiana	50	X	X		
Iowa	300		X		

CHART OF POLLING PLACE STATUTES

STATE	DISTANCE ¹	CRIME ²	ELECTION RELATED ³	TOTAL BAN ⁴	OTHER ⁵
Kansas	250	X	X		X
Kentucky	500		X		
Louisiana	600		X		
Maine	250	X	X		
Maryland	100	X	X		
Massachusetts	150	X	X		
Michigan	100	X	X		X
Minnesota	100			X	
Mississippi	150	X	X		
Missouri	25	X	X		
Montana	200		X		
Nebraska	200	X	X		
Nevada	0	X	X		
New Hampshire	10	X	X		
New Jersey	100	X	X		

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CHART OF POLLING PLACE STATUTES

STATE	DISTANCE ¹	CRIME ²	ELECTION RELATED ³	TOTAL BAN ⁴	OTHER ⁵
New Mexico	100	X	X		
New York	100		X		
North Carolina	50		X		
North Dakota	100	X	X		X
Ohio	100		X		
Oklahoma	300	X	X		
Oregon	100		X		
Pennsylvania	0		X		
Rhode Island	50		X		
South Carolina	200	X	X		
South Dakota	100	X	X		
Tennessee	100	X	X		
Texas	100	X	X		
Utah	150	X	X		

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CHART OF POLLING PLACE STATUTES

<u>STATE</u>	<u>DISTANCE¹</u>	<u>CRIME²</u>	<u>ELECTION RELATED³</u>	<u>TOTAL BAN⁴</u>	<u>OTHER⁵</u>
Vermont	0		X		
Virginia	40		X		
Washington ⁷	300	X	X		
West Virginia	300			X	
Wisconsin	500		X		
Wyoming	300	X	X		

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Footnotes

¹ All distances are measured in feet. Some statutes refer to distances in yards; however, all distances in this chart have been converted to feet for comparison purposes.

² States which provide for a criminal penalty for violation of the regulation are included in this category.

³ "Election Related" statutes are those similar to Tenn. Code Ann. § 2-7-111 which regulate activities pertaining to the election such as distributing campaign material, soliciting votes and electioneering.

⁴ Some states prohibit any persons except voters, election officials and certain other individuals assisting disabled voters from being within the restricted zone.

⁵ States in this category ban other activities unrelated to the election such as charitable and commercial solicitations.

⁶ This statute was declared unconstitutional overbroad in *Clean Up '84 v. Henrich*, 759 F.2d 1511 (11th Cir. 1985) and repealed pursuant to 1987 Fla. Laws 87-184, § 5.

⁷ This statute was declared unconstitutional in *Daily Herald Co. v. Munro*, 838 F.2d 380 (9th Cir. 1988).

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POLLING PLACE STATUTES

Alabama

ALA. CODE § 17-7-17 (1988)

Except as electors are admitted to vote and persons to assist them as herein provided, and except the sheriff or his deputy, the inspectors, returning officer, clerks of elections and watchers, no person shall be permitted within 30 feet of the polling place.

Alaska

ALASKA STAT. § 15.15.170 (1990)

During the hours the polls are open, a person who is in the polling place or within 200 feet of any entrance to the polling place may not attempt to persuade a person to vote for or against a candidate proposition or question. The election judges shall post warning notices at the required distance in the form and manner prescribed by the director.

Arizona

ARIZ. REV. STAT. ANN. § 16-1018(1) (1984)

A person who commits any of the following acts is guilty of a class 2 misdemeanor:

1. Knowingly electioneers on election day within a polling place or in a public manner within 150 feet of the main outside entrance of the polling place.

Arkansas

ARK. STAT. ANN. § 7-1-103(9) (1989 Supp.)

No person shall hand out or distribute or offer to hand out or distribute any campaign literature or any literature regarding any candidate or issue on the ballot, solicit signatures on any petition, solicit contributions for any charitable or other purpose, or do any electioneering of any kind whatsoever within 100 feet of any polling place on election day.

California

CAL. ELEC. CODE § 29470 (West 1989)

No person, on election day, shall within 100 feet of a polling place:

- (a) Circulate an initiative, referendum, recall, or nomination petition or any other petition.
- (b) Solicit a vote or speak to a voter on the subject of marking his ballot.
- (c) Place a sign relating to voters' qualifications or speak to a voter on the subject of his qualifications except as provided in Section 14216.
- (d) Do any electioneering.

As used in this section "100 feet of polling place" shall mean a distance 100 feet from the room or rooms in which voters are signing the roster and casting ballots.

Colorado

COLO. REV. STAT. § 1-13-714 (1980)

No person shall do any electioneering on the day of any election within any polling place or in any public street or room or in any public manner within 100 feet of any polling place, as publicly posted by the county clerk and recorder.

Connecticut

CONN. GEN. STAT. § 9-236 (1990 Supp)

On the day of any primary, referendum or election, no person shall solicit in behalf of the candidacy of another or himself or in behalf of any question being submitted at the election of referendum, or loiter or peddle or offer any advertising matter, ballot or circular to another person within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place or in any corridor, passageway or other approach leading from any such outside entrance to such polling place or in any room opening upon any such corridor, passageway or approach, except as provided in section 9-294.

Delaware

DEL. CODE ANN. tit. 15 § 4942(a)(1981)

No election officer, challenger or any other person within the polling place or within 50 feet of the entrance to the building in which the voting room is located shall

electioneer during the conduct of the election. No political headquarters or gathering shall be permitted within that building during the conduct of the election.

Florida

FLA. STAT. § 104-36 (1982)

Any person who, within 100 yards of any polling place on the day of any election, distributes, or attempts to distribute any political or campaign material; solicits or attempts to solicit any vote, opinion, or contribution for any purpose; solicits or attempts to solicit a signature on any petition; or, except in an established place of business, sells or attempts to sell any item is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This statute was declared unconstitutionally overbroad in *Clean Up '84 v. Henrich*, 759 F.2d 1511 (11th Cir. 1985) and repealed pursuant to 1987 Fla. Laws 87-184, § 5.

Georgia

GA. CODE ANN. § 34A1206 (1990 Supp)

(a) No person shall solicit votes in any manner or by any means or method, nor shall any person distribute any campaign literature, newspaper, booklet, pamphlet, card, sign, or any other written or printed matter of any kind, nor shall any person conduct any exit poll or public opinion poll with voters on any primary or election day:

(1) Within the boundary of the property upon which such polling place is located, within 50 feet of any polling place, or within 50 feet of the outer edge of any

building within which such polling place is established, whichever distance is less;

(2) Within any polling place; or

(3) Within 25 feet of any voter standing in line at such polling place.

(b) No person shall solicit signatures for any petition on any primary or election day:

(1) Within the boundary of the property upon which such polling place is located, within 50 feet of any polling place, or within 50 feet of the outer edge of any building within which such polling place is established, whichever distance is less;

(2) Within any polling place; or

(3) Within 25 feet of any voter standing in line at such polling place.

Hawaii

HAW. REV. STAT. § 11-132(a) (1985) 19-6

The precinct officials shall post in a conspicuous place, prior to the opening of the polls, a map designating an area of one thousand feet in radius around the polling place. Any person who remains or loiters within an area of one thousand feet in radius around the polling place for the purpose of campaigning shall be guilty of a misdemeanor.

Idaho

IDAHO CODE § 18-2318 (1987)

On the day of any primary, general or special election, no person may, within a polling place, or any building in which an election is being held, or within one hundred (100) feet thereof:

- (a) Do any electioneering;
- (b) Circulate cards or handbills of any kind;
- (c) Solicit signatures of any kind to petition; or
- (d) Engage in any practice which interferes with the freedom of voters to exercise their franchise or disrupts the administration of the polling place.

Illinois

ILL. REV. STAT. ch. 46 para. 17-29 (1990 Supp.)

No judge of election, pollwatcher, or other person shall, at any primary or election, do any electioneering or soliciting of votes or engage in any political discussion within any polling place or within 100 feet of any polling place; no person shall interrupt, hinder or oppose any voter while approaching within 100 feet of any polling place for the purpose of voting.

Indiana

IND. CODE § 3-14-3-16 (1988)

A person who knowingly does any electioneering on election day within the polls or within 50 feet of the polls commits a Class D felony.

Iowa

IOWA CODE § 49.107(1) (1990)

The following acts, except as specially authorized by law, are prohibited on any election day:

1. Loitering, congregating, electioneering, posting of signs, treating voters or soliciting votes, during the receiving of the ballots, either on the premises of any polling place or within 300 feet of any outside door of any building affording access to any room where the polls are held, or of any outside door of any building affording access to any hallway, corridor, stairway or other means of reaching the room where the polls are held, except this subsection shall not apply to posting of signs on private property not a polling place.

Kansas

KAN. STAT. ANN. § 25-2413(E)(1) (1986)

Disorderly election conduct is willfully:

(e) Engaging in any of the following activities within 25 feet from entrance of polling place during the hours the polls are open on election day: (1) soliciting of contributions.

Kentucky

KY REV. STAT. ANN. § 117-235(3) (1990 Supp)

No person shall do any electioneering at the polling place or within a distance of five hundred (500) feet of any entrance to a building in which a voting machine is

located if that entrance is unlocked and is used by voters on election day, unless the fiscal court or legislative body of an urban-county government specifically authorizes by ordinance on a county-wide basis a greater distance for the polling place within which electioneering may be permitted, but in no case shall electioneering be allowed within five hundred (500) feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and if used by voters. Electioneering shall include the displaying of signs, the distribution of campaign literature, cards or handbills, the soliciting of signatures to any petition, or the solicitation of votes for or against any candidate or question on the ballot in any manner, but shall not include exit polling. Nothing contained in this section shall prohibit electioneering conducted within a private residence or establishment other than that in which the polling place is located by persons having an ownership interest in such property.

Louisiana

LA. REV. STAT. ANN. § 18:1462 (1990)

Except as otherwise specifically provided by law, it shall be unlawful for any person, between the hours of 6:00 a.m. and 9:00 p.m., to perform or cause to be performed any of the following acts within any polling place being used in an election on election day or within any place wherein absentee voting is being conducted, or within a radius of six hundred feet of the entrance to any polling place begin [sic] used in an election on election day or any place wherein absentee voting is being conducted:

(1) To solicit in any manner or by any means whatsoever any other person to vote for or against any candidate or proposition being voted on in such election.

(2) To remain within any such polling place or place wherein absentee voting is being conducted or within a radius of six hundred feet of the entrance of any such polling place, except when exercising the right to vote, after having been directed, in writing, by an election commissioner or law enforcement officer to leave the premises or area of a polling place or after having been directed, in writing, by a registrar or deputy registrar to leave the place wherein absentee voting is being conducted.

(3) To hand out, place, or display campaign cards, pictures, or other campaign literature of any kind or description whatsoever.

(4) To place or display political signs, pictures, or other forms of political advertising.

Maine

ME. REV. STAT. ANN. tit. 21A, § 682(3) (1990)

No person may display any advertising material or operate any advertising medium, including a sound amplification device, intended to influence the opinion of any voter, within 250 feet of the entrance to either the voting place or the registrar's office. The term "sound amplification device" include, but is not limited to, sound trucks [sic], loudspeakers and blowhorns.

A. This subsection does not apply to advertising material on automobiles traveling to and from the voting

place. It does not prohibit a person from passing out stickers at the voting place which are to be pasted on the ballot at a primary election. It does not prohibit a person, other than an election official, from wearing a campaign button when the longest dimension of the button does not exceed 3 inches.

Maryland

MD. ELEC. ANN. CODE art. 33 § 24-23(a)(4)(i) (1990)

(a) The following offenses shall be punished as in this section provided. For any person:

(4)(i) to canvass, electioneer or post any campaign material in the polling place or beyond a line established by signs posted in accordance with this paragraph. At each polling place, 2 election judges, 1 from each principal political party, shall be designated by the election board and, acting jointly, shall post signs outlining a line around the entrance and exit of the building closest to that part of the building in which voting occurs. The line shall be located as near as practicable to 100 feet from the entrance and exit and shall be established after consideration of the configuration of the entrance and the effect of placement on public safety and the flow of pedestrian and vehicular traffic. The signs shall contain the following or comparable language: "No Electioneering Beyond this Point."

Massachusetts

MASS. GEN. L. ch 54 § 65 (1990)

At an election of state or city officers, and of town officers in towns where official ballots are used, the

presiding election officer at each polling place shall, before the opening of the polls, post at least three cards of instruction, three cards containing abstracts of the laws imposing penalties upon voters, and a[t] least three specimen ballots within the polling place outside the guard rail, and have available at the check in area at state elections a number of copies of the information for voters material provided for in section fifty-four at least one for every one hundred voters; and no other poster, card, handbill, placard, picture or circular intended to influence the action of the voter shall be posted, exhibited, circulated or distributed in the polling place, in the building where the polling place is located, on the walls thereof, on the premises on which the building stands, or within one hundred and fifty feet of the building entrance door to such polling place.

Michigan

MICH. COMP. LAWS § 168.744 (1989 Supp.)

It shall be unlawful for any person to place or distribute stickers, other than stickers provided by the election officials pursuant to law, in the polling room or any compartment therewith connected or within 100 feet from any entrance to the building in which said polling place is located.

It shall be unlawful for any person to solicit donations, gifts, contributions, purchase of tickets or similar demands, or to request or obtain signatures on petitions in the polling room or any compartment therewith connected or within 100 feet from any entrance to the building in which the polling place is located.

Minnesota

MINN. STAT. § 204C.06(1) (1990 Supp)

No one except an election official or an individual who is waiting to register to vote shall congregate in any manner or stand within 100 feet of the entrance to a polling place.

Mississippi

MISS. CODE ANN. § 23-15-895 (1990)

It shall be unlawful for any candidate for an elective office or any representative of such candidate to post or distribute cards, posters or other campaign literature within one hundred fifty (150) feet of any entrance of the building wherein any election is being held. It shall be unlawful for any candidate or a representative named by him in writing, to appear at any polling place while armed or uniformed, nor shall he display any badge or credentials except as may be issued by the manager of the polling place.

Missouri

MO. REV. STAT. § 115.647(18) (1990 Supp)

Class 4 Election offenses/misdemeanors

Exit polling, surveying, sampling, electioneering, distributing election literature, posting signs or placing vehicles bearing signs with respect to any candidate or question to be voted on at an election day inside the building in which a polling place is located or within 25 feet of the buildings outer door closest to the polling

place, or, on the part of any person, refusing to remove or permit removal from property owned or controlled by him, any such election sign or literature located within such a district on such day after required for removal by any person.

Montana

MONT. CODE ANN. § 13-35-211 (1990)

(1) No person may do any electioneering on election day within any polling place or any building in which an election is being held or within 200 feet thereof, which aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.

(2) No person may buy, sell, give, wear, or display at or about the polls on an election day any badge, button, or other insignia which is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election.

(3) No person within a polling place or any building in which an election is being held may solicit from an elector, before or after he has marked his ballot and returned it to an election judge, information as to whether the elector intends to vote or has voted for or against a candidate or ballot issue.

Nebraska

NEB. REV. STAT. § 32-1221 (1988)

No officer of election shall do any electioneering on election day. No person shall do any electioneering on

election day within any polling place, any building in which an election is being held, or two hundred feet thereof, nor obstruct the doors or entries thereto or prevent free ingress to and from such building. Any election officer, sheriff, or other peace officer shall clear the passageways and prevent such obstruction and shall arrest any person so doing. No person shall conduct any exit poll, public opinion poll, or any other interview with voters on election day seeking to determine voter preference within twenty feet of entrance of any polling place room or, if inside the polling place building, within one hundred feet of any voting booth.

Nevada

NEV. REV. STAT. § 293.740(1) (1990)

It is unlawful inside a polling place:

(a) For any person to solicit a vote or speak to a voter on the subject of marking his ballot.

New Hampshire

N.H. REV. STAT. ANN. § 659.23(II.) (1989 Supp)

No person who is a candidate for office or who is representing or working for a candidate shall distribute any campaign materials or perform any electioneering activities or any activity which affects the safety, welfare and rights of voters within a corridor 10 feet wide and extending a distance from the entrance door of the building as determined by the moderator where the election is being held.

New Jersey

N.J. REV. STAT. § 19:34-6 (1989)

If a person shall on election day tamper, deface or interfere with any polling booth or obstruct the entrance to any polling place, or obstruct or interfere with any voter, or loiter, or do any electioneering within any polling place or within 100 feet thereof, he shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$500 or by imprisonment not exceeding 1 year or both.

New Mexico

N. M. STAT. ANN. § 1-20-16 (1985)

Electioneering too close to the polling place consists of any form of campaigning on election day within 100 feet of the building in which the polling place is located, and includes the display of signs or distribution of campaign literature.

New York

N.Y. ELEC. LAW § 17-130(4) (1978)

Any person who:

4. Electioneers on election day or on days of registration within one hundred feet, as defined herein, from a polling place. Said prohibition shall not apply to a building or room that has been maintained for political purposes at least six months prior to said election or registration days, except that no political displays, placards or posters shall be exhibited therefrom. For the purposes of this section, the one hundred feet distance

shall be deemed to include a one hundred foot radial measured from the entrances, designated by the inspectors of elections, to a building where the election or registration is being held.

North Carolina

N.C. GEN. STAT. § 163.147 (1990)

No person or group of persons shall, while the polls are open at the voting place on the day of the primary or election, loiter about, congregate, distribute campaign material, or do any electioneering within the voting place, or within 50 feet in any direction of the entrance or entrances to the building in which the voting place is located. Notwithstanding the above provision, if the voting place is located in a large building, the registrar and judges of the precinct may designate the entrance to the voting place within said building and none of the above activity shall be permitted within 50 feet of said entrance or entrances of said voting place. This section shall not, however, prohibit any candidate for nomination or election from visiting such voting place in person, provided he does not enter the voting enclosure except to cast his vote as a registered voter in said precinct. The county boards of elections and precinct registrars shall have full authority to enforce the provisions of this section.

North Dakota

N.D. CENT. CODE § 16.1-10-03, -06, -06.2 (1990)

16.1-10-03. Political badge, button, or insignia at elections. No person shall, on the day of an election, buy, sell,

give, or provide any political badge, button, or any insignia to be worn at or about the polls on that day. No such political badge, button, or insignia shall be worn at or about the polls on any election day.

16.1-10-06. Electioneering on election day - Penalty. Any person asking, soliciting, or in any manner trying to induce or persuade, any voter on an election day to vote or refrain from voting for any candidate or the candidates or ticket of any political party or organization, or any measure submitted to the people, shall be guilty of an infraction. The display upon motor vehicles of adhesive signs which are not readily removable and which promote the candidacy of any individual, any political party, or a vote upon any measure, and political advertisements promoting the candidacy of any individual, political party, or a vote upon any measure which are displayed on fixed permanent billboards, shall not, however, be deemed a violation on this section.

16.1-10-06.2. Sale or distribution at polling place. No person may approach a person attempting to enter a polling place, or who is in a polling place, for the purpose of selling, soliciting for sale, advertising for sale, or distributing any merchandise, product, literature, or service. This prohibition applies in any polling place or within one hundred feet [30.48 meters] from any entrance leading into a polling place on election day.

Ohio

OHIO REV. CODE ANN. § 3501.30 and 3501.35 (1988)

3501.30 Supplies for polling places. Two or more small flags of the United States approximately fifteen

inches in length along the top shall be provided and shall be placed at a distance of one hundred feet from the polling place on the thoroughfares or walkways leading to the polling place, to mark the distance within which persons other than election officials, witnesses, challengers, police officers, and electors waiting to mark, marking, or casting their ballots shall not loiter, congregate, or engage in any kind of election campaigning. Where small flags cannot reasonably be placed one hundred feet from the polling place, the presiding election judge shall place the flags as near to one hundred feet for the entrance to the polling place as is physically possible. Police officers and all election officials shall see that this prohibition against loitering and congregating is enforced. When the period of time during which the polling place is open for voting expires, all of said flags shall be taken into the polling place, and shall be returned to the board together with all other election materials and supplies required to be delivered to such board.

3501.35. No loitering near polls. During an election and the counting of the ballots, no person shall loiter or congregate within the area between the polling place and the small flags of the United States placed on the thoroughfares and walkways leading to the polling place; in any manner hinder or delay an elector in reaching or leaving the place fixed for casting his ballot; within such distance give, tender, or exhibit any ballot or ticket to any person other than his own ballot to the judge of election; exhibit any ticket or ballot which he intends to cast; or solicit or in any manner attempt to influence any elector in casting his vote. No person, not an election official,

employee, witness, challenger, or police officer, shall be allowed to enter the polling place during the election, except for the purpose of voting. No more electors shall be allowed to approach the voting shelves at any time than there are voting shelves provided. The judges of election and the police officer shall strictly enforce the observance of this section.

Oklahoma

OK. REV. STAT. tit. 26 § 7-108 (1976)

No person shall be allowed to electioneer within 300 feet of any ballot box while an election is in progress, nor shall any person or persons, except election officials and other persons authorized by law, be allowed within 50 feet of any ballot box while an election is in progress.

Oregon

OR. REV. STAT. § 260.695 (1986)

(2) No person, within any building in which a polling place is located or within 100 feet measured radially from any entrance to the building, shall do any electioneering, including circulating any cards or handbills, or soliciting signatures to any petition. No person shall do any electioneering by public address system located more than 100 feet from an entrance to the building but capable of being understood within 100 feet of the building. The electioneering need not relate to the election being conducted.

Pennsylvania

PA. STAT. ANN. tit. 25 § 3060(c) (1963)

No person, when within the polling place, shall electioneer or solicit votes for any political party, political body or candidate, nor shall any written or printed matter be posted up with said room except as required by this Act.

Rhode Island

R.I. GEN. LAWS § 17-19-49 (1988)

No poster, paper, circular, or other document designed or tending to aid, injure, or defeat any candidate for public office or any political party on any question submitted to the voters shall be distributed or displayed within the voting place or within fifty (50) feet of the entrance or entrances to the building in which voting is conducted at any primary or election. Neither shall any election official display on his or her person within the voting place any political party button, badge, or other device tending to aid, injure, or defeat the candidacy of any person for public office or any question submitted to the voters or to intimidate or influence the voters.

South Carolina

S.C. CODE ANN. § 7-25-180 (Law. Co-op. 1977)

It shall be unlawful on any election day within two hundred feet of the building wherein a polling place is located for any person to distribute any type of campaign literature or place any political posters. The poll manager

shall use every reasonable means to keep the area within two hundred feet of the polling place clear of political literature and displays, and the county and municipal law enforcement officer shall, upon request of a poll manager, remove or cause to be removed any material within two hundred feet of a polling place distributed or displayed in violation of this section.

South Dakota

S.D. CODIFIED LAWS ANN. § 12-18-3 (1990)

Except for sample ballots and materials and supplies necessary for the conduct of the election, no person may, in any polling place or within or on any building in which a polling place is located or within one hundred feet from any entrance leading into a polling place, maintain an office or communications center or public address system or display campaign posters, signs or other campaign materials or by any like means solicit any votes for or against any person or political party or position on a question submitted. No person may engage in any practice which interferes with the voter's free access to the polls or disrupts the administration of the polling place, or conduct, on the day of an election, any exit poll or public opinion poll with voters within one hundred feet of a polling place.

Texas

TEX. ELEC. CODE ANN. § 61.003 (Vernon 1986)

(a) A person commits an offense if, during the voting period and within 100 feet of an outside door through

which a voter may enter the building in which a polling place is located, the person:

(1) loiters; or

(2) Electioneers for or against any candidate, measure, or political party.

(b) In this section, "voting period" means the period beginning when the polls open for voting and ending when the polls close or the last voter has voted, whichever is later.

Utah

UTAH CODE ANN. § 20-13-17 (1990 Supp)

(1) On the day of any primary, general, municipal, bond, or special election, within a polling place or in any public area within 150 feet of the building where a polling place is located, no person may:

(a) do any electioneering

(b) circulate cards or handbills of any kind;

(c) solicit signatures to any kind of petition; or

(d) engage in any practice that interferes with the freedom of voters to exercise their franchise or disrupts the administration of the polling place.

Vermont

VT. STAT. ANN. tit. 17 § 2508(a) (1990 Supp)

The presiding officer shall insure during polling hours that:

(1) Within the building containing a polling place, no campaign literature, stickers, buttons, name stamps, information on write-in candidates or other political materials are displayed, placed, handed out or allowed to remain; and

(2) Within the building containing a polling place, no candidate, election official or other person distributes election materials, solicits voters, or otherwise campaigns; and

(3) On the walks and driveways leading to a building in which a polling place is located, no candidate or other person may physically interfere with the progress of a voter to and from the polling place.

Virginia

VA. CODE ANN. § 24.1-101 (1985)

During the receiving and counting of the ballots, it shall be unlawful for any person to loiter or congregate within forty feet of any entrance of any polling place; in any manner to hinder or delay a qualified voter in reaching or leaving a polling place; within such distance to give, tender, or exhibit any ballot, ticket or other campaign material to any person or to solicit or in any manner attempt to influence any person in casting his vote.

Washington

WASH. REV. CODE § 29.51.020 (1985)

(1) On the day of any primary, general or special election, no person may, within a polling place, or in any

public area within three hundred feet of any entrance to such polling place:

- (a) Do any electioneering;
- (b) Circulate cards or handbills of any kind;
- (c) Solicit signatures to any kind of petition;
- (d) Engage in any practice which interferes with the freedom of voters to exercise their franchise or disrupts the administration of the polling place; or
- (e) Conduct any exit poll or public opinion poll with voters.

This statute was declared unconstitutional in *Daily Herald Co. v. Munro*, 838 F.2d 380 (9th Cir. 1988).

West Virginia

W. VA. CODE § 3-1-37 (1990)

No person, except the election officers and voters while going to the election room to vote and returning therefrom, may be or remain within three hundred feet of the outside entrance to the building housing the polling place while the polls are open; but this section does not apply to persons living or carrying on business within that distance of the election room, while in the discharge of their legitimate business, or to persons whose business requires them to pass and repass within three hundred feet of such entrance.

Wisconsin

WIS. STAT. § 12.03 (1986)

(2) No person may engage in electioneering during polling hours on election day within 500 feet of an entrance to a building containing a polling place.

Wyoming

WYO. STAT. § 22-26-113 (1977)

Electioneering too close to a polling place consists of any form of campaigning on election day within one hundred (100) yards of the building in which the polling place is located, and includes also the display of signs or distributions of campaign literature.
